

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)	
)	
Rulemaking to Amend Parts 1, 2, 21 and 25)	
of the Commission's Rules to Redesignate)	
the 27.5-29.5 GHz Frequency Band, to)	CC Docket No. 92-297
Establish Rules and Policies for Local)	
Multipoint Distribution Service and for)	
Fixed Satellite Services)	
)	
and)	
)	
Suite 12 Group Petition for Pioneer's)	PP-22
Preference)	

**BELL ATLANTIC OPPOSITION TO
WEBCEL PETITION FOR RECONSIDERATION**

Bell Atlantic Corporation opposes WebCel Communications, Inc.'s Petition for Reconsideration of the Second Report in this proceeding.¹ WebCel is bound and determined to acquire LMDS spectrum at below-market rates. Not only does WebCel boldly demand a 35 percent discount on all the LMDS spectrum it wins at auction, it also seeks rule changes that would hobble its most formidable competitors at the auction. WebCel's arguments are based on the sheerest of speculation, and would serve solely to limit competition for these licenses during the upcoming auctions. The Commission should therefore dismiss this latest effort to suppress bidding competition.

¹ Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, FCC 97-82 (rel. Mar. 13, 1997) ("Second Report" or "Fifth NPRM" as appropriate). Bell Atlantic also opposes LBC Communications, Inc.'s Petition for Reconsideration (filed May 29, 1997) that adopts the arguments advanced by WebCel.

I. WEBCEL'S ATTEMPT TO EXCLUDE LECS FROM LMDS BIDDING IS UNSUPPORTED AND CONTRADICTS FCC AUCTION POLICIES.

In the Second Report, the Commission barred incumbent LECs from holding an 1150 Mhz LMDS license that significantly overlaps their service area, but permitted them to bid on these licenses as long as they bring themselves into compliance within 90 days after obtaining the license.² While the Commission's overly broad eligibility restriction is itself unjustified, WebCel seeks to broaden it even further.

WebCel argues that LECs should not be allowed to bid on licenses for which they are not otherwise eligible with a commitment to cure their ineligibility because they will "manipulat[e] the process, inflat[e] the price of LMDS licenses, deter[] entry by potential competitors, and creat[e] additional hurdles to the already difficult task of capital-raising by smaller, entrepreneurial LMDS auction participants."³ This is fanciful speculation designed to suppress bidding at the LMDS auction.

First, WebCel's theory that some parties may participate in the auction merely to "drive up prices" has been fully addressed by the Commission's existing auction rules. From the outset of the spectrum auction process, the Commission has designed and refined its rules to limit participation to those parties who intend to develop the licenses they purchase. Nothing in WebCel's petition shows why LMDS is somehow unique so

² See Second Report, ¶¶ 186-88, 144-45.

³ WebCel Petition at 14.

that those rules are now ineffective for LMDS. Nor has WebCel showed that its claimed concern has in fact occurred in any of the Commission's spectrum auctions.

Second, WebCel piles speculation on top of speculation to suggest that LECs must be completely barred from bidding on certain LMDS licenses because they might "[e]ngage in sham bidding for LMDS auctions" or "pursue strategies designed to prevent entry by a competitive LMDS provider or otherwise delay commercialization of LMDS in the same manner as the spectrum 'warehousing' prohibited by the *Second Report and Order*."⁴ The fact that these actions are already proscribed by the Commission's rules and the antitrust laws is a complete answer to WebCel's argument.⁵ There is simply no reason to adopt more rules where the theoretical concern can easily be addressed through enforcement of existing rules and statutes.

Third, WebCel's suggestion that "[i]ncumbent LECs . . . can bid on in-region BTAs by divesting their overlapping telephone . . . facilities in advance of the auction" is nothing short of ludicrous. Divesting telephone facilities before the auction would be completely pointless if the LEC was not completely successful in the auction. Moreover, it would require LECs to cease providing telephone service within their own service areas until they have won LMDS spectrum at auction and built their own LMDS facilities. Such a requirement is plainly not in the public interest.

⁴ WebCel Petition at 15.

⁵ See, e.g., 47 C.F.R. § 1.2108 and new Section 101.1110.

Finally, WebCel's position that LECs must be excluded from bidding for 1150 Mhz licenses contradicts the Commission's efforts to promote a robust market for LMDS. The Commission has found that LMDS will benefit from LEC participation, and nothing in WebCel's Petition challenges that finding.

II. THE COMMISSION SHOULD NOT REDUCE THE ATTRIBUTION INTEREST LIMIT FOR LMDS ELIGIBILITY

WebCel also seeks to handicap its auction competitors by further restricting the financial support they can receive from incumbent LECs. WebCel argues that the incumbent LECs should be barred from holding even a 10 percent interest in an in-region LMDS licensee. WebCel's arguments don't withstand scrutiny.

First, WebCel claims that under the 20 percent attribution rule adopted by the Commission, "*the five regional Bell Operating Companies are permitted to form a wholly-owned joint venture for LMDS, allowing the same anticompetitive auction tactics and spectrum warehousing the eligibility rule is designed to prevent.*"⁶ Again, it is a complete answer to WebCel's theoretical concerns to say that anticompetitive auction tactics and spectrum warehousing are already proscribed by the Commission's rules. There is therefore no need for additional Commission rules where the Commission can simply enforce its existing rules.

Second, WebCel claims that the Commission should not have adopted the same 20 percent rule it uses for attributing ownership interests in CMRS licenses because there

⁶ WebCel Petition at 19 (emphasis in original).

are “several factors which distinguish LMDS from the broader CMRS context”⁷

This claim is incredible because eleven pages earlier in its Petition WebCel relies on the **similarities** between CMRS and LMDS to justify its request for a 35 percent discount on the LMDS licenses it wins.⁸ WebCel can’t have it both ways.

III. THE COMMISSION SHOULD NOT TREAT WARRANTS AND SIMILAR CONVERTIBLE INSTRUMENTS AS EXERCISED FOR PURPOSES OF THE ELIGIBILITY RESTRICTION

WebCel also wants the Commission to change the eligibility rule to treat warrants and similar convertible interests as exercised and therefore attribute them. WebCel’s request is procedurally defective and contrary to well-established Commission policy.

WebCel filed comments and reply comments on the Commission’s Fourth Notice of Proposed Rulemaking, but failed to raise this issue. It cannot at this late date first surface it.⁹ There is also no record evidence to support WebCel’s proposed change to the eligibility rule.

Moreover, where the Commission has established eligibility rules to address competitive concerns, it has consistently not attributed warrants and other convertible securities until they are actually exercised or converted. For example, under the CATV/MMDS cross-ownership eligibility restrictions, “[h]olders of debt and instruments

⁷ WebCel Petition at 20.

⁸ WebCel Petition at 9 (“Like F Block PCS, LMDS is a local, market-specific service that is uniquely well-suited to very small businesses”).

⁹ See 47 C.F.R. § 1.429(b).

such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.”¹⁰ The Commission adopted the same attribution rule for the DBS auction,¹¹ and followed that precedent for LMDS eligibility in this proceeding. There is no reason for the Commission to adopt a different rule here.

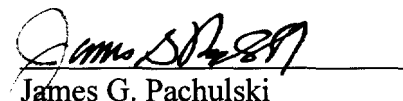
CONCLUSION

The rule changes suggested by WebCel on reconsideration would simply restrain bidding competition at the auction and allow WebCel to walk away with below-market bargains. The Commission should therefore reject WebCel’s Petition for Reconsideration.

Respectfully submitted,

The Bell Atlantic Telephone Companies

By their Attorney


James G. Pachulski
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-2804

Edward D. Young III
Michael E. Glover
Of Counsel

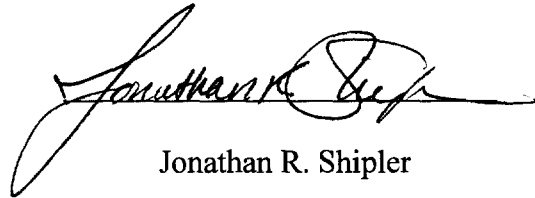
Dated: July 2, 1997

¹⁰ 47 C.F.R. § 21.912. Accord, 47 C.F.R. § 20.6(d)(5) (options and warrants not attributed to determine compliance with CMRS “spectrum cap” until they are exercised).

¹¹ In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, Report and Order, 11 FCC Rcd 9712, 9811 (1995).

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 1997, a copy of the foregoing "Bell Atlantic Opposition to WebCel Petition for Reconsideration" was served by first class U.S. mail to the parties on the attached list.

A handwritten signature in black ink, appearing to read "Jonathan R. Shipler", with a large, stylized flourish extending from the end of the signature.

Jonathan R. Shipler

* BY HAND

Glenn B. Manishin
Blumenfeld & Cohen--
Technology Law Group
1615 M Street, N.W.
Suite 700
Washington, DC 20036

(Counsel for WebCel Communications, Inc.)

Martin L. Stern
David Rice
Preston Gates Ellis & Rouvelas
Meeds LLP
1735 New York Avenue, N.W.
Suite 500
Washington, DC 20006

(Counsel for WebCel Communications, Inc.)

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554

Daniels S. Goldberg
W. Kenneth Ferree
Goldberg, Godles, Weiner & Wright
1229 19th Street, N.W.
Washington, DC 20036

(Counsel for LBC Communications, Inc.)